

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Post Office Box 20207
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January 15, 2004

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

IN RE: TARIFF TO ESTABLISH WELCOMING REWARDS PROMOTION -
TARIFF NO. 20031366

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's *Motion to Enter A Final Written Order* in regards to Docket No. 03-00625. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615)532-2590. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Shirley".

JOE SHIRLEY
Assistant Attorney General

cc: All Parties of Record

#66649

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**TARIFF TO ESTABLISH WELCOMING
REWARDS PROMOTION -
TARIFF NO. 20031366**

DOCKET NO. 03-00625

MOTION TO ENTER A FINAL WRITTEN ORDER

Comes now Paul G. Summers, the Attorney General for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to Rule 1 of the Tennessee Rules of Civil Procedure,¹ and hereby moves the Tennessee Regulatory Authority ("TRA") to immediately enter a final written order in the above-styled matter. In support of its motion, the Consumer Advocate respectfully submits the following:

1. The Consumer Advocate needs to review and evaluate a written order before it can seek the Attorney General's permission to pursue appeal of this matter. Issues raised in this case are important to consumers and are related to a case currently pending before the Court of Appeals.

2. The Consumer Advocate filed complaints objecting to the above-styled tariff as submitted on the grounds that it violated certain, identified provisions of federal and state law which require BellSouth Telecommunications, Inc. ("BellSouth") to offer non-discriminatory rates and to open its local telecommunications markets to competition for the benefit of consumers.

3. Notwithstanding the Consumer Advocate's pending complaints, the TRA decided to

¹ "These rules shall be construed to secure the just, speedy and inexpensive determination of every action." Tenn. R. Civ. P. 1.

approve BellSouth's proposed tariff without granting the Consumer Advocate's request to open a contested case proceeding to address the consumers' claims.

4. The TRA's decision to simultaneously approve BellSouth's tariff and reject the Consumer Advocate's complaints raises serious questions regarding the appropriate standards for the convening of a contested case proceeding upon a petition filed by the Consumer Advocate.

5. Similar questions are presented in a number of cases where tariffs aimed at providing regulated telecommunications services to Tennessee consumers were approved in the face of the Consumer Advocate's pending request for a hearing on the validity of the tariff proposal. *See* Docket No. 03-00512, *In Re: Promotion to Introduce BellSouth Integrated Solutions Program - Tariff No. 2003956*; Docket No. 03-00554, *In Re: Tariff to Establish the Wireless Answers Promotion - Tariff No. 20031036*; Docket No. 03-00624, *In Re: Tariff to Establish Consumer Wireless Combined Bill Reward Offer - Tariff No. 20031379*; and Docket No. 03-00625, *In Re: Tariff to Establish Welcoming Rewards Promotion - Tariff No. 20031366*.

6. The Consumer Advocate is of the opinion that the results of the TRA's actions as well as the procedures the agency employed to reach those results are erroneous, and that the TRA's ruling may be reversed in the Court of Appeals, if appealed.

7. The review and analysis of a final written order is generally part of the Consumer Advocate's process of deciding whether to appeal an adverse decision.

8. The Consumer Advocate has appealed a prior TRA decision which involves issues that are closely connected to the procedural and substantive issues presented in this matter and related cases, particularly the right of the Consumer Advocate to a contested case proceeding. This appeal is currently pending in the Court of Appeals. *See Office of the Attorney General, Consumer Advocate and Protection Division v. Tennessee Regulatory Authority*, Case No. M2003-01363-COA-

R12-CV (TRA Docket No. 03-00060, *In Re: BellSouth's Tariff to Introduce Welcoming Reward Program* - Tariff No. 2003017).

9. Consequently, the Consumer Advocate believes that the TRA decisions rendered in this matter and related cases are highly relevant to the case that is currently pending before the Court.


10. When the final written order is entered, the Consumer Advocate will then be able to initiate internal procedures within the Attorney General's Office for determining whether the Consumer Advocate will seek appellate review of that written order. In the case of appeal, it could benefit the Court, and therefore be in the interest of justice, if all related matters are brought to the attention of the Court as soon as practicable.

11. Whether or not the TRA's final written order in this matter is appealed, the Consumer Advocate is of the opinion that the agency ruling in this docket is pertinent to issues pending in the Court of Appeals. Accordingly, it could benefit the Court, and therefore be in the interest of justice, if the TRA's ruling is brought to the attention of the Court as soon as practicable.

WHEREFORE, the Consumer Advocate respectfully requests that the TRA immediately enter its final written order in this docket.

RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285
Attorney General and Reporter


JOE SHIRLEY, B.P.R. #022287
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-2590


Dated: January 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, or facsimile on January 15, 2004, upon:

Joelle Phillips, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Henry Walker, Esq.
Boult, Cummings, Conners & Berry
414 Union Street, Suite 1600
Nashville, Tennessee 37219



JOE SHIRLEY
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